

Introduction

EFFECTIVE JANUARY 1, 1990 your workplace, along with some 233,000 others throughout Ontario, was required by the *Smoking in the Workplace Act* to restrict on-the-job smoking.

The purpose of this Act is to restrict workplace smoking by establishing minimum standards that limit exposure to tobacco smoke in the workplace.

The *Smoking in the Workplace Act* applies to all workplaces under provincial jurisdiction. In other words, 90 per cent of the Ontario work force is covered by the *Act*. This includes retail, commercial, manufacturing and mining operations, hospitals, social service agencies and educational institutions.

Given the large number of workplaces that are subject to this law, you are probably affected. So, whether you are an employer or an employee, it is important that you know your rights and responsibilities under the *Act*.

1. A Brief Guide to the Smoking in the Workplace Act

The *Smoking in the Workplace Act* sets out clear restrictions on smoking in the workplace. Here's what it does...

- The *Act* prohibits smoking in enclosed workplaces. An "enclosed workplace" means a partially or fully completed building, mine or tunnel that is separated from the outdoors.
- Vehicles, such as buses or the cabs of trucks, are not considered to be workplaces. However, a mobile library or health unit located in a trailer, for example, would be considered a workplace and therefore is subject to this *Act*.

- Areas of a workplace used primarily by the public are also exempt from the *Act*. For example, shopping malls, the floor area of a store or service

centre that is accessible to the public, restaurants and bars are exempt from this legislation. Areas of a workplace that are not accessible to the public, such as lunch rooms and the area behind counters, are subject to this *Act*. Many Ontario municipalities now have regulations in place restricting smoking in public areas.

- Employers may designate a smoking area in the workplace. If an employer does not designate a smoking area, smoking is banned in that workplace.
- If an employer chooses to designate a smoking area, this area (or areas) cannot exceed 25 per cent of the floor area of the workplace.
- Prior to designating the smoking area, an employer is required to consult with one of the following: 1) the joint health and safety committee; 2) a similar committee in which employees participate; or 3) the workers' health and safety representative.
- If an employee asks to work in a place away from a designated smoking area, the employer is obliged to make every reasonable effort to accommodate that request.
- It is an offence for an employer to take a reprisal action against an employee who has lodged a complaint under this *Act*.
- Employers convicted of an offence under this *Act* are subject to a maximum fine of \$25,000 and employees to a maximum fine of \$500.
- This *Act* is enforced by Ministry of Labour inspectors appointed under the *Occupational Health and Safety Act*.
- The *Smoking in the Workplace Act* recognizes that there now exist workplace smoking restrictions in some municipalities and in federally regulated workplaces. In order to work effectively with other statutes and by-laws that restrict workplace

smoking, the *Act* states that the more restrictive provision, whether it is a municipal by-law or other *Act* or regulation, will prevail.

2. Putting the Act to Work in Your Workplace

The *Smoking in the Workplace Act* is not complicated. In fact it's very simple.

The following steps serve as a guide to follow in putting the *Act* to work in your workplace:

1. Employers should begin thinking now about whether or not they want to designate smoking areas in their workplace.

Prior to establishing a designated smoking area, employers are required to consult with the joint health and safety committee, a similar committee in which employees participate or the workers' health and safety representative.

It is possible that your workplace does not have such a committee or a health and safety representative. In such cases there is no obligation to consult, but it still makes sense to talk it over with your employees. This is a good opportunity to find out what their preferences are and what problems some individuals may have with tobacco smoke. An employer will be in a better position to make an informed decision after learning how the employees feel. Ultimately, however, it is the employer's decision.

2. If the employer has decided not to designate a smoking area, smoking is prohibited in that workplace. If the decision is to designate an area, certain restrictions will apply.

[Note, the designated smoking area or areas (there may be more than one) is limited by the *Act* to a maximum size of 25 per cent of the floor area of the workplace. Whether there is one or several smoking areas, the total area of all smoking areas cannot exceed 25 per cent of the floor area.]

3. Employers are required to post signs that identify the designated smoking area(s) in the workplace.

4. If an employee asks to be moved to a location away from a designated smoking area, the employer is required to make every reasonable effort to accommodate the employee's request. This may involve moving the employee to another desk, section of the work area or a separate office. Employers should be sensitive to employee requests not only because the legislation says they must attempt to accommodate such requests but because some people have adverse reactions to tobacco smoke.

5. Employers, whether they have designated a smoking area or chosen to prohibit smoking in the workplace, are responsible for ensuring compliance in their workplace. In other words, they are required, within reason, to ensure that smoking is confined to the designated areas or, if smoking is prohibited, to ensure that no one smokes in that workplace.

6. For further information or assistance regarding workplace smoking, please contact the Ministry of Labour office near you.

For complete information on the *Smoking in the Workplace Act*, as well as the *Occupational Health and Safety Act* and related regulations, please contact your local Ministry of Labour office listed in the Blue Pages of your telephone directory.

Copies of the Concise List of Publications, listing the occupational health and safety and employment standards publications available from the Ministry of Labour, can be obtained from:

Publications Section
Ministry of Labour
400 University Ave 9th Fl
Toronto ON M7A 1T7
Tel: 416-326-7731/1-800-268-8013 (ex 6-7731)
Fax: 416-326-7745
E-mail: pubsale@gov.on.ca

Health and safety information is also available from the Ministry of Labour's fax-back system called "FactsLine". Dial 416-326-6546 and follow the voice prompts.

As well, check our web site at:
www.gov.on.ca/LAB/main.htm

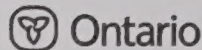
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